United Nations CERD/C/BEL/CO/16-19

International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations on the sixteenth to nineteenth periodic reports of Belgium*

1. The Committee on the Elimination of Racial Discrimination considered the sixteenth to nineteenth periodic reports of Belgium, submitted in a single document (CERD/C/BEL/16-19), at its 2271st and 2272nd meetings, held on 6 and 7 February 2014 (see CERD/C/SR.2271 and 2272). At its 2289th and 2290th meetings, held on 19 and 20 February 2014 (see CERD/C/SR.2289 and 2290), the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the timely submission of the sixteenth to nineteenth periodic reports of the State party, in a single document. The Committee is satisfied with the open and constructive dialogue it has had with the delegation of the State party. The Committee notes with satisfaction the oral presentation and the detailed responses provided by the delegation during the consideration of the report.

B. Positive aspects

3. The Committee commends the State party on the following legislative, policy and institutional developments since the submission of the State party's previous periodic report:

(a) Royal Order of 22 December 2009 amending article 17 of the Royal Order of 9 June 2009 implementing the Act of 30 April 1999 on the employment of foreign workers, which allows access to the labour market for asylum seekers whose application has received no response for six months;

(b) Act of 12 September 2011 amending the Act of 15 December 1980 on the award of temporary residence permits to unaccompanied foreign minors;

(c) Act of 14 January 2013, which increases the penalties for certain offences in the case of aggravated circumstances based on discriminatory motives, including racial motives;

* Adopted by the Committee at its eighty-fourth session (3–21 February 2014).

(d) National Roma Integration Strategy, adopted in March 2012;

(e) National Action Plan 2012-2014 to Combat Trafficking in and Smuggling of Human Beings;

(f) Founding of the "Kazerne Dossin" Memorial, Museum and Documentation Centre on the Holocaust and Human Rights, on 1 December 2012.

4. The Committee expresses its satisfaction with the work of the Centre for Equal Opportunities and Action to Combat Racism, including its work on socio-economic monitoring and its Diversity Barometer.

5. The Committee welcomes the ratification by the State party of the following international human rights instruments:

(a) Convention on the Rights of Persons with Disabilities and its Optional Protocol, on 2 July 2009;

(b) International Convention for the Protection of All Persons from Enforced Disappearance, on 2 June 201[illegible]

C. Concerns and recommendations

National plan of action against racism

6. The Committee is concerned that the State party has not yet adopted a national action plan against racism as provided for by the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (art. 2).

The Committee recommends that the State party accelerate the process of adoption of a national action plan against racism.

Establishment of a national human rights institution

7. The Committee notes with satisfaction that the Centre for Equal Opportunities and Action to Combat Racism has become interfederal, with competence to monitor discrimination at the regional and local levels as well as the federal level. However, the Committee is concerned that the State party has not yet established a national human rights institution in full compliance with the Paris Principles. The Committee is also concerned that the competence of the Centre for Equal Opportunities and Action to Combat Racism in matters relating to migration and non-nationals has been transferred to the newly created Federal Centre for the Analysis of Migratory Flows, the Protection of the Fundamental Rights of Foreigners, and Action against Human Trafficking, which has authority only at the federal level. The Committee is further concerned that the board of the new Centre will be appointed by the Executive, which may compromise its independence (art. 2).

The Committee recommends that the State party accelerate the process for the establishment of a national human rights institution in full compliance with the Paris Principles. The Committee also recommends that the State party provide the newly created Federal Centre for the Analysis of Migratory Flows, the Protection of the Fundamental Rights of Foreigners, and Action against Human Trafficking (Centre on Migration) with the human and financial resources it requires to carry out its mandate effectively. The Committee further recommends that the State party ensure that the new Centre cooperates closely with the Interfederal Centre for Equal Opportunities and Action to Combat Racism on matters relating to discrimination against migrants.

Special measures

8. The Committee notes that, while the Act of 10 May 2007 authorizes the use of special measures, the Act provides for the issuance of a royal order specifying the circumstances in which such measures may be used. The Committee is concerned that, almost seven years later, such a royal order has not been issued (art. 2).

Recalling its general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee recommends that the State party, as a matter of priority, issue the royal order provided for in the Act of 10 May 2007 to enable public and private entities to adopt policies regarding special measures.

Prohibition of organizations which promote racial discrimination

9. While taking note of the State party's approach of penalizing individuals belonging to organizations which promote and incite racial discrimination, the Committee remains concerned that the State party has not adopted legislation declaring organizations which promote and incite racial discrimination illegal, in conformity with article 4 (b) of the Convention (art. 4).

Recalling its general recommendations No. 1 (1972) on States parties' obligations, No. 7 (1985) on legislation to eradicate racial discrimination, No. 15 (1993) on organized violence based on ethnic origin and No. 35 (2013) on combating racist hate speech, which state that the provisions of article 4 of the Convention are of a preventive and mandatory nature, the Committee reiterates its previous recommendation that the State party adopt specific legislation to implement all aspects of article 4 of the Convention, including the provisions that organizations which promote and incite racial discrimination shall be declared illegal and prohibited.

Anti-Semitism and Islamophobia

10. In view of the intersectionality of religion and ethnicity in the State party, and while noting the numerous measures the State party has implemented to counter anti-Semitism and Islamophobia, including awareness campaigns, the creation of a watchdog unit on anti-Semitism and campaigns against cyber hate, the Committee remains concerned at the number of acts of Islamophobia and anti-Semitism that have occurred in the State party (art. 2).

The Committee recommends that the State party:

(a) Increase its vigilance and reinforce measures to combat anti-Semitism and Islamophobia;

(b) Reinforce its awareness-raising campaigns on anti-Semitism and Islamophobia and promote tolerance among the various ethnic groups of its population;

(c) Promptly investigate, prosecute and punish, with appropriate penalties, the perpetrators and provide adequate protection to victims;

(d) Investigate the underlying causes of the anti-Semitism and Islamophobia in its society and inform the Committee on the results;

The Committee also recommends that the State party provide information in its next periodic report on the outcomes of cases relating to acts of Islamophobia and anti-Semitism before its domestic courts and tribunals.

11. While noting the explanations of the delegation of the State party, the Committee is concerned that the decision of the autonomous board of Flemish Community Education to prohibit the wearing of symbols of belief in all schools under its authority, as well as the decision of the French Community to leave that decision to each school, may constitute a basis for discrimination against members of some ethnic groups (arts. 2 and 7).

The Committee recommends that the State party ensure that any policies regarding the wearing of symbols of belief in schools and in employment do not in practice lead to discrimination on the basis of ethnicity or national origin, or cause de facto segregation. The Committee recommends that the State party promote dialogue and tolerance on this subject.

Police and racially motivated acts and violence

12. While welcoming the issuance of Circular No. 13/2013 of 17 June 2013 and the training programmes the State party has put in place for the police and judges, the Committee is concerned at reports that racially motivated violence and ill-treatment by police officers of persons with an immigrant background remains a problem. The Committee is also concerned at the very low number of complaints lodged to date and investigated by the Standing Police Monitoring Committee. It is further concerned at the low number of cases of racially motivated acts and violence committed by police officers that have been addressed by the State party's courts (arts. 2 and 6).

Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party take all the necessary measures to combat racially motivated violence by police officers firmly and effectively. The Committee also recommends that the State party:

(a) Ensure that all victims of racially motivated violence, including undocumented migrants, can lodge complaints effectively without fear of reprisals;

(b) Ensure that all allegations of racially motivated acts are thoroughly, promptly and impartially investigated, and perpetrators prosecuted and sanctioned as appropriate, including by disciplinary measures;

(c) Reinforce the independence and effectiveness of the mechanism for lodging complaints against police officers;

(d) Enhance, including by allocating sufficient time for, human rights training programmes for police officers, in particular on the provisions of the Convention, and evaluate the effectiveness of training programmes;

(e) Provide the Committee with information on the outcome of cases of racially motivated acts before courts, including disciplinary proceedings.

13. While noting the explanations and additional documentation provided by the delegation of the State party, the Committee remains concerned at reports that violence by police officers during the deportation of foreigners persists. The Committee is further concerned that the small number of checks carried out by the General Inspectorate of the Federal and Local Police and the lack of adequate resources allocated to that body may hamper its effectiveness in executing its mandate to control and monitor deportations. The Committee is also concerned at reports that victims of such violence face difficulties in lodging complaints (arts. 2 and 6).

The Committee recommends that the State party step up its monitoring of deportations of foreign nationals, increase the number of controls over deportations and ensure that the General Inspectorate of the Federal and Local Police has

adequate resources to execute its mandate effectively. The Committee also recommends that the State party consider permitting the monitoring of deportations by non-governmental organizations or adopt alternative measures to enhance monitoring, such as video recording. The Committee further recommends that the State party facilitate the lodging of complaints about racially motivated violence during deportations, investigate such complaints, sanction those responsible with appropriate penalties and provide appropriate remedies and assistance to the victims.

Persons of foreign origin in the criminal justice system

14. While noting the State party's acknowledgment of the lack of reliable data on the subject, the Committee remains concerned at reports that persons of foreign origin are overrepresented in the criminal justice system, including with respect to rate and length of incarceration.

In the light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party investigate the extent to which persons of foreign origin are overrepresented in the criminal justice system and take appropriate steps to address any problem found in this regard.

Structural discrimination against non-citizens in relation to economic, social and cultural rights

15. The Committee is concerned that, despite numerous measures taken by the State party at the federal, regional and community levels, migrants and persons of foreign origin continue to face obstacles to the full enjoyment of economic, social and cultural rights. In particular, the Committee is concerned at reports that persons of foreign origin, especially those from non-European Union countries, face structural discrimination in the field of employment, where "ethnic stratification" seems to exist. The Committee is further concerned at difficulties faced by such persons in accessing housing (art. 5).

Recalling its general recommendation No. 30 (2005) on discrimination against non-citizens and No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee recommends that the State party strengthen existing measures at the federal, regional and community levels, to improve the integration of persons of foreign origin in the labour market and address the structural discrimination they face. The Committee also recommends that the State party step up its efforts to encourage recruitment of persons of foreign origin to jobs in the public and private sectors, implementing special measures as appropriate. The Committee further recommends that the State party investigate effectively cases of racial discrimination in employment and provide victims with adequate remedies.

The Committee recommends that the State party pursue and reinforce measures taken at federal, regional, and community levels to facilitate access to adequate housing for persons of foreign origin and firmly combat racial discrimination in access to housing.

16. The Committee is concerned at reports that access to urgent medical care is restricted for irregular migrants. It is also concerned at reports that, in some public social assistance centres in Antwerp, Ghent and Brussels, urgent medical care for irregular migrants has been conditional on their agreement to voluntarily return to their countries of origin. The Committee is further concerned at the Act of 19 January 2012, which added article 57 quinquies to the Organic Law of 8 July 1976 on public social assistance centres and which provides that nationals of European Union member States shall not qualify for social assistance for three months after their arrival in Belgium (art. 5).

Recalling its general recommendation No. 30 (2005) on discrimination against non-citizens, the Committee recommends that the State party take appropriate measures at the federal, regional and community levels to ensure that irregular migrants have access to health-care services without discrimination on the basis of their national origin. The Committee also recommends that the State party consider amending the Act of 19 January 2012 to provide newly arrived migrants from European Union countries with social services without discrimination on the basis of their national origin.

17. While noting the explanations provided by the delegation of the State party, the Committee is concerned that the Act of 4 December 2012 amending the Nationality Code makes it more difficult to acquire Belgian nationality. The Committee is also concerned that such amendments, particularly the new criteria relating to economic integration, create additional obstacles to the integration of migrants into Belgian society, especially for those who face difficulties in obtaining paid employment. The Committee is further concerned that the Act of 8 July 2011 amending the Act of 15 December 1980 on the entry, residence, settlement and expulsion of foreign nationals with respect to the conditions for family reunification, imposes more restrictive conditions on family reunification for Belgian nationals than for citizens of other European Union member States, thereby disadvantaging recently naturalized Belgians of non-European Union origin. (art. 5).

Recalling its general recommendation No. 30 (2005) on discrimination against non-citizens, the Committee recommends that the State party consider amending its legislation regarding the acquisition of Belgian nationality to facilitate the integration of migrants into its society. In particular, the Committee recommends that the State party make the criteria for economic integration more flexible. The Committee recommends that the State party ensure that its legislation regarding family reunification for persons who have been naturalized does not discriminate on the basis of national origin or ethnicity. The Committee further recommends that the State party ratify the 1961 Convention on the Reduction of Statelessness.

Discrimination against Roma and Travellers

18. While noting the inclusive policies of the State party at various levels regarding education, employment, health care and culture, the Committee is concerned at the persistent social exclusion and direct and indirect discrimination faced by Roma regarding the enjoyment of economic, social and cultural rights. In particular, the Committee is concerned at discrimination against Roma with regard to access to housing due, inter alia, to their intermittent residence in the territory of the State party (art. 5)

Recalling its general recommendation No. 27 (2000) on discrimination against Roma, the Committee recommends that the State party implement effectively measures at the federal, regional and community levels to promote the integration of Roma, and firmly combat direct and indirect discrimination against Roma in the fields of employment, education and health. The Committee also recommends that the State party regularly review its policies on Roma in consultation with them and give priority to sustainable solutions regarding their residence status. The Committee urges the State party to speed up the implementation of its National Roma Integration Strategy.

19. The Committee is concerned that the State party has not yet arrived at sustainable solutions to the housing situation of Travellers, who continue to lack sites and are at risk of being expelled by local authorities. In particular, the Committee is concerned that caravans are not recognized as valid housing in the Walloon region and that, in the Flemish and Brussels regions, housing quality standards do not cover caravans or the sites where they are parked. The Committee is further concerned at reports that Travellers face difficulties in

being registered as residents of municipalities, which prevents them from having valid identification papers and fully enjoying their rights, in particular, access to welfare services (art. 5).

The Committee recommends that the State party take specific action at various levels to address the housing situation of Travellers, including by recognizing caravans as valid housing, providing appropriate sites for caravans and adopting suitable housing quality standards. The Committee also recommends that the State party facilitate the registration of Travellers by municipalities.

Treatment of asylum seekers

20. While noting the explanations provided by the delegation about the treatment of asylum seekers under Regulation (EU) No 604/3013 of the European Parliament and of the Council of 26 June 2013 (Dublin III), the Committee is concerned at reports that asylum seekers continue to be systematically detained at borders (art. 5).

Recalling its general recommendation No. 30 (2005) on discrimination against non-citizens, the Committee recommends that the State party ensure that non-custodial measures are used whenever possible and that detention of asylum seekers at borders is used as a measure of last resort. The Committee also recommends that the State party ensure that the enactment of Dublin III at the domestic level and its interpretation by the authorities are in compliance with international standards and the Convention.

Trafficking in persons

21. The Committee is concerned at the persistence in the State party of trafficking in persons, particularly women and girls for economic and sexual exploitation. The Committee regrets that the State party has not provided specific statistical data on this matter. It is also concerned at reports that the provision of assistance to victims of trafficking may be subject to restrictive conditions (art. 5).

The Committee recommends that the State party pursue its efforts to combat trafficking in persons, including by implementing effectively its National Action Plan to Combat Trafficking and Smuggling in Human Beings. The Committee recommends that the State party step up investigations into trafficking, prosecute those responsible and impose appropriate penalties. The Committee also recommends that the State party increase assistance to victims and afford them adequate remedies. The Committee further recommends that the State party consider revising its law to facilitate the provision of assistance to victims. The Committee recommends that the State party provide the Committee with statistical data, disaggregated by national and ethnic origin, on this issue in its next report.

Cultures and language of migrants

22. The Committee is concerned about the lack of information on efforts by the State party to facilitate the preservation of the cultures and languages of migrants (art. 7).

The Committee encourages the State party to adopt measures aimed at promoting and facilitating the preservation and development of the cultures and languages of migrant groups established in its territory.

D. Other recommendations

Follow-up to the Durban Declaration and Programme of Action

23. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that, when incorporating the provisions of the Convention into its domestic legislation, the State party take into consideration the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures adopted to implement the Durban Declaration and Programme of Action at the national level.

Dialogue with civil society

24. The Committee recommends that the State party continue consulting and expanding its dialogue with civil society organizations working in the area of human rights protection, in particular those combating racial discrimination, in connection with the preparation of its next periodic report.

Amendment to article 8 of the Convention

25. The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee cites General Assembly resolutions 61/148, 63/243, 65/200 and 67/156, in which the General Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

Follow-up to concluding observations

26. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 8, 19 and 20 above.

Recommendations of particular importance

27. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 7, 10, 12 and 15 above and requests the State party to provide detailed information in its next periodic report on the specific measures taken to implement them.

Dissemination

28. The Committee recommends that the State party's reports be made readily available to the general public as soon as they are submitted and that the Committee's concluding observations with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.

Preparation of the next report

29. The Committee recommends that the State party submit its twentieth to twenty-second periodic reports in a single document by 6 September 2018, taking into account the treaty-specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60 to 80 pages for the common core document (see the harmonized reporting guidelines in document HRI/GEN/2/Rev.6, chap. I, para. 19).